

(2) Have had an average length of stay in the institution of at least 30 days.

*Institution for neglected children and youth* means, as determined by the SEA, a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who—

(1) Have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and

(2) Have had an average length of stay in the institution of at least 30 days.

*Regular program of instruction* means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction.

(c) The following definitions apply to the local agency program authorized in part D, subpart 2 of title I of the Act:

*Immigrant children and youth* and *Limited English Proficiency* have the same meanings as those terms are defined in section 7501 of the Act, except that the terms *individual* and *children and youth* used in those definitions mean *children and youth* as defined in this section.

*Locally operated correctional facility* means a facility in which persons are confined as a result of a conviction for a criminal offense, including persons under 21 years of age. The term also includes a local public or private institution and community day program or school not operated by the State that serves delinquent children and youth.

*Migrant youth* means the same as *migratory child* as that term is defined in § 200.40(d).

(Authority: 20 U.S.C. 6432, 6472)

#### § 200.51 SEA counts of eligible children.

To receive an allocation under part D, subpart 1 of title I of the Act, an SEA must provide the Secretary with a

count of children and youth under the age of 21 enrolled in a regular program of instruction operated or supported by State agencies in institutions or community day programs for neglected or delinquent children and youth and adult correctional institutions as specified in paragraphs (a) and (b) of this section:

(a) *Enrollment.* (1) To be counted, a child or youth must be enrolled in a regular program of instruction for at least—

(i) 20 hours per week if in an institution or community day program for neglected or delinquent children; or

(ii) 15 hours per week if in an adult correctional institution.

(2) The State agency shall specify the date on which the enrollment of neglected or delinquent children is determined under paragraph (a)(1) of this section, except that the date specified shall be—

(i) Consistent for all institutions or community day programs operated by the State agency; and

(ii) Represent a school day in the calendar year preceding the year in which funds become available.

(b) *Adjustment of enrollment.* The SEA shall adjust the enrollment for each institution or community day program served by a State agency by—

(1) Multiplying the number determined in paragraph (a) of this section by the number of days per year the regular program of instruction operates; and

(2) Dividing the result of paragraph (b)(1) of this section by 180.

(c) *Date of submission.* The SEA must annually submit the data in paragraph (b) of this section no later than January 31.

(Authority: 20 U.S.C. 6432)

#### §§ 200.52–200.59 [Reserved]

### Subpart E—General Provisions

#### § 200.60 Reservation of funds for State administration and school improvement.

(a) *State administration.* An SEA may reserve for State administration activities authorized in section 1603 of the Act no more than—

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(1) One percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act; or

(2)(i) \$400,000 (\$50,000 for the Outlying Areas), whichever is greater.

(ii) An SEA reserving \$400,000 under paragraph (a)(2)(i) of this section shall reserve proportionate amounts from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(b) *School improvement.* (1) To carry out school improvement activities authorized under sections 1116 and 1117 of the Act, an SEA may reserve no more than .5 percent from each of the amounts allocated to the State or Outlying Area under section 1002(a), (c), and (d) of the Act.

(2)(i) An SEA shall have available from funds received under section 1002(f) of the Act or reserved under paragraph (b)(1) of this section no less than \$200,000 (\$25,000 for the Outlying Areas) to carry out school improvement activities.

(ii)(A) If funds made available for school improvement under section 1002(f) of the Act do not equal \$200,000 (\$25,000 for Outlying Areas), the SEA shall reserve funds in accordance with paragraph (b)(1) of this section.

(B) If the amount reserved under paragraph (b)(1) when added to funds received under section 1002(f), does not equal \$200,000 (\$25,000 for the Outlying Areas), the SEA shall reserve additional funds under section 1002(a), (c), and (d) as are necessary to make \$200,000 (\$25,000 for the Outlying Areas) available to the SEA.

(c) *Reservation from section 1002(a) funds.* In reserving funds for State administration and school improvement under section 1002(a) of the Act, an SEA shall—

(1) Reserve proportionate amounts from each of the State's basic grant, concentration grant, and targeted grant allocations; and

(2) Ensure that from the funds remaining for basic grants, concentration grants, and targeted grants after reserving funds for State administration and school improvement, no eligible LEA receives less than the hold-harmless amounts determined under § 200.25, except when the amounts re-

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maining are insufficient to pay all LEAs the hold-harmless amounts provided in § 200.25, the SEA shall ratably reduce each LEA's hold harmless allocation to the amount available.

(Authority: 20 U.S.C. 6303, 6513(c))

### § 200.61 Use of funds reserved for State administration.

An SEA may use any of the funds that it has reserved under § 200.60(a) to perform general administrative activities necessary to carry out, at the State level, any of the programs authorized under title I of the Act.

(Authority: 20 U.S.C. 6513(c))

### § 200.62 [Reserved]

### § 200.63 Exclusion of supplemental State and local funds from supplement, not supplant and comparability determinations.

(a) For purposes of determining compliance with the comparability requirement in section 1120A(c) and the supplement, not supplant requirement in section 1120A(b) of the Act, a grantee or subgrantee under Parts A or C of Title I may exclude supplemental State and local funds spent in any school attendance area or school for programs that meet the intent and purposes of Title I.

(b) A program meets the intent and purposes of Title I if the program either—

(1)(i) Is implemented in a school in which the percentage of children from low-income families is at least 50 percent;

(ii) Is designed to promote schoolwide reform and upgrade the entire educational operation of the school to support students in their achievement toward meeting the State's challenging student performance standards that all children are expected to meet;

(iii) Is designed to meet the educational needs of all children in the school, particularly the needs of children who are failing, or most at risk of failing, to meet the State's challenging student performance standards; and

(iv) Uses the State's system of assessment, if final, or the transitional assessment system to review the effectiveness of the program; or